in the United Kingdom in March or April. By that time Inspector Elam Din was out of the case, having closed the Police investigation file which he had handed over to Inspector Mong in February, and we have it in evidence from Inspector Mong that from that time he took no active step in investigating the matter, nor did any member of the Police Force. Clearly when Forrest made his statement in the United Kingdom it was in the course of an investigation conducted solely by the R.A.F. and the provisions of section 124 of the Criminal Procedure Code do not apply to it.

But the statements of Nos. 2, 3 and 4 accused were made on the 4th February. And the question which I have to determine, upon the evidence, is whether at that time, the investigation in the course of which these statements were made was an R.A.F. investigation or whether it was a Police investigation under Chapter XIII of the Criminal Procedure Code in which the R.A.F. were assisting.

The Police investigation file was not formally closed until the 5th February. Speaking of the part taken by the R.A.F. in the course of his investigation, Inspector Elam Din says "we were working together. They reported to me. It was a joint investigation. They reported progress to me. I reported progress to them." No doubt that was the fact in the early stages. But it was not the fact on the 4th February. The identification parade at Paya Lebar was held by the R.A.F. on their own initiative, and Inspector Elam Din was neither asked to send the two civilian witnesses, Low and Tan, nor informed that the parade was to take place. No Police Officer attended the parade. No report was made to the Police that the parade had taken place. A.S.P. Haines, who was Inspector Elam Din's superior officer and was called to give evidence at the suggestion of Mr. Elias, said on referring to the Police Diary that the last recorded act of Inspector Elam Din in the course of his investigation was on the 31st January, when the lorry was photographed. In my opinion the fact that no report was made to the Police of the identification parade on 4th February, coupled with the fact that the statements of Nos. 2, 3 and 4 accused were not sent to the Police for inclusion in their file, is significant upon this question of whether the statements were made in the course of a Police investigation under Chapter XIII or in the course of an investigation conducted by the R.A.F. alone. We have it in evidence from Mr. Haines that he knew nothing of the statements or of the parade until a day or two prior to 4th March, on which date having reason to believe that a civilian (Ginsberg) was involved the Police took over the case. The fact that these statements implicate Ginsberg supports Mr. Haines' evidence, because if he had seen the statements shortly after they were made, or copies of them, he would have seen that they implicated a civilian and would have taken over the case then. But it is clear that when the R.A.F. provost staff came to him on 5th February they only came to ask for his assistance in the matter of obtaining search warrants, and that from that time at any rate until he took over the case it was solely an R.A.F. investigation.

I cannot see that the case of *P. P. v. Ramasamy*[2] is of any assistance on this point. In that case there was only one investigation, and it was a Police investigation. In this case the question is whether, if any Police investigation was in fact still being conducted on 4th February, there was not a separate and independent R.A.F. investigation, and whether it was not in the course of this separate and independent R.A.F. investigation that these statements were made. I find upon the evidence that the statements were made to the R.A.F provost staff in the course of an investigation which they alone were conducting on 4th February. Section 124 of the Criminal Procedure Code does not therefore apply to them, and I rule that they are admissible in evidence, subject to a consideration of their possible inadmissibility under Section 24 of the Evidence Ordinance.

Ruled Accordingly.

SIN YAT CHI v. REX.

[App. Crim. Juris. (Gordon-Smith, Ag. C.J.)
January 13, 1949]
[Singapore — Magistrate's Appeal No. 195 of 1948]

Societies Ordinance Ss. 12 (1) and 15 (1) — Membership of unlawful society — Presumption from possession of badge of unlawful society — Meaning of possession.

In this case the accused appealed against his conviction of being a member of an unlawful society. The facts were that a badge of the unlawful society was found in a cupboard drawer in a room where the accused and his two employees carried on a tailoring and dressmaking business.

Held, that on the facts the possession by the accused was not proved beyond reasonable doubt and therefore the presumption under S. 15(1) of the Societies Ordinance did not arise and the conviction must be quashed.

Cases referred to :—

(1) *Loh Chak Wan v. P. P.* (1939) M.L.J. 84.
(2) *Goh Kong Tuan* 1 Johore Law Reports 44.
(3) *R. v. Harris* (1925) L.J. K.B. 164.
(4) *Toh Ah Loh and Mak Thim v. Rex* (1949) M.L.J. 54.

MAGISTRATE'S APPEAL.

M. B. Brash for the Appellant,

A. D. Farrell (D. P. P.) for the Respondent.

Gordon-Smith, Ag. C. J. : — In this appeal the accused had been convicted of being a member of an unlawful society, namely, "Marn Yi", and thus committed an offence punishable under s. 12(1) of Cap. 217.

The facts are not in dispute and briefly were as follows: — In the course of a Police raid carried out at No. 236 Waterloo Street on the 12th April last a badge was found in a room of which the accused was a tenant. Such badge indicated membership of the Marn Yi Secret Society. It was found in a cupboard drawer in which also were cloth, needles, buttons and tailoring equipment. No one slept in the room but it was used by the accused for his tailoring and dress making business. The accused had two employees who would come and assist him in his work, as and when required. Anybody using the room would have access to the drawer, more particularly the two employees, as tailoring equipment was kept in the drawer.

The accused denied membership of the Society or ever having been asked to join it and denied all knowledge of the badge, never having seen it before.

On these facts the learned Magistrate held that such possession was proved and raised the presumption contained in s. 15(1) of the Ordinance, which presumption the accused had failed to rebut and he convicted the accused and passed a sentence of 4 months R.I.

The whole case depends on the interpretation of the word "possession" which is not defined in the Ordinance. During the argument I was referred by Mr. Brash to the cases of *Loh Chak Wan*[1]; *Goh Kong Tuan*[2]; *R. v. Harris*[3] and the recent case of *Mak Tim* decided in the Colony Court of Criminal Appeal[4]. Various statutes were also referred, e.g. the Coinage Act s. 14, which defines possession, also the Minor Offences Ordinance (Cap. 24) s. 34(3) also defining possession, and the Larceny Act, 1916, in relation to the possession of housebreaking implements, but these are not very helpful.

I agree with Mr. Farrell that there is a distinction to be drawn in regard to offences in connection with the possession in the night time of housebreaking implements and also in regard to coinage implements and that possession need not necessarily be exclusive possession. I agree also that it is a matter of common sense to interpret what the legislature means by such possession.

The case of *Mak Tim*[4] was one of unlawful possession of ammunition, the appellant having been fortuitously engaged to unload a sampan of wooden boxes which he said he thought contained tinned provisions but which actually contained ammunition. In that case the Court of Criminal Appeal laid down that "possession" in order to incriminate a person must have the following characteristics: (a) the possessor must know the nature of the thing possessed, (b) must have a power of disposal over the thing possessed and (c) must be conscious of his possession of the thing, and that if these factors were absent, his possession could raise no presumption of *mens rea*. This case, however, was not decided until October and was therefore subsequent to the hearing by the Magistrate of the present case.

I can see no reason to distinguish between unlawful possession of ammunition and possession of a badge of an unlawful society. In both instances the burden of proving innocence is cast on the accused and the interpretation to be placed upon the word "possession" should be the same. The accused in his evidence denied being a member of the Society, denied ownership of the badge and stated that he had never seen it before. What other evidence could he bring? He could certainly not produce the real owner to come and admit ownership. It may have been put by one of his employees or by anyone else, into the drawer and one would hardly describe the cotton, needles and tailoring equipment in the drawer as being "personal possessions" of the accused in the ordinary sense of the words, as found by the Magistrate. There was no other evidence whatsoever to connect the accused with any unlawful society. Nor do I think that it necessarily follows that because the two employees were casual workers, called on when required, therefore it was unlikely that either of them was the possessor of the badge and had placed it in the drawer.

In my opinion "possession" by the accused was not proved beyond reasonable doubt in this case and, therefore, the presumption did not arise and the conviction must be quashed. Further, where the ordinary principles of law are abrogated by legislation, very great care should be exercised in interpreting such legislation, particularly in the absence of specific definition of what the legislation means and the evil it is intended to cure, otherwise nobody would be safe from conviction and heavy penalties under circumstances such as the above.

Appeal Allowed.

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CONTENTS.

NOTES OF CASES:—

Federation 119
Singapore 120

REPORTS:—

Naranjan Singh v. Public Prosecutor 122
Fazal Din v. Public Prosecutor 123
Wong Heng v. Public Prosecutor 127
Haji Aishah Binte Lebai Itam v. Yah Binti Taib 128
See Yew Poo v. Public Prosecutor 131
Lee Kim Lai v. T. R. Sundram & Anor. 134
A. Nunn, Singer Sewing Machine Co. v. Low Kam & Ors. 136
Ong Kim Piaw v. Public Prosecutor 137
Ismail Bin Haji Ibrahim v. Public Prosecutor 139
Rex v. Shum Soo 142
In the Matter of the Trusts of the Will of Hadjee Haroun Bin Tamby Kechik, deceased 143
Chua Keng Geok & Ors. v. British Malaya Trustee & Executor Co., Ltd. 144

NOTES OF CASES.

FEDERATION.

Criminal Procedure — Application by accused person for adjournment to enable him to brief counsel — Customs Enactment S. 114(1)(e).

This was an appeal against the conviction of the appellant for the offence of being in possession of uncustomed goods. The appellant, a native of Sepang, was arrested in Kuala Lumpur on the 8th of February 1949. When charged he claimed trial and the trial was fixed for the 12th of February 1949, bail being granted in the sum of $10,000.00.

On the 12th of February 1949 when the case was called, the appellant stated he had been unable to find the sum of $10,000.00 necessary for bail and therefore had been unable to instruct counsel to defend him. He asked for an adjournment to enable him to brief counsel. This was refused, the trial proceeded and the appellant was convicted.

Held, (Russell, J.), (1) that every accused person has a right, if he so desires to be defended by an Advocate and should be given sufficient time to instruct counsel; (2) that in this case the appellant had been guilty of no delay in endeavouring to get bail and to brief counsel and his application for adjournment should have been granted; (3) that in the circumstances the conviction must be quashed and a retrial ordered.

Marjoribanks for the Appellant; **M. Suffian (D.P.P.)** for the Respondent.

Chong Fah Hin v. Public Prosecutor (K.L. Criminal Appeal from Sessions Court No. 6 of 1949). Decided on April 8, 1949.

Emergency Regulations 1948, Regulations 4(1)(a) 4(1)(b) and 33 — Admissibility of evidence of Police Inspector who omitted to administer caution to the accused before statement made — Whether a Captain of Malay Regiment is a police officer.

In this case the accused was charged with possession at Sungei Panu in Pahang of a single barrelled shotgun under Regulation 4(1)(a) of the Emergency Regulations, and with possession, at the same time and place, of 12 bore cartridges under Regulation 4(1)(b) of the Regulations. Evidence was given of the finding of these articles by a combined Military and Police party in an attap house in which the accused and two other men were present on the 1st February, 1949. The prosecution sought to put in evidence two statements made by the accused: the first a statement taken by a Police Inspector on the 7th February through a Chinese Interpreter without giving caution to the accused as is laid down in proviso to Regulation 33 of the Regulations as amended on the 10th January, 1949, and the second an oral statement made by the accused to Captain Thorp of the Malay Regiment.

Held, (Spenser-Wilkinson, J.), that the statement by the accused to a police officer of the rank of Inspector was inadmissible under Regulation 33(1) of the Emergency Regulations, 1948 on the ground that the warning that the accused was not obliged to answer any question, which was laid down by proviso (b) to paragraph (1) of Regulation 33, had been omitted from the

caution administered to the accused before the statement was made; (2) that for the purpose of the Emergency Regulations, 1948, a Captain of the Malay Regiment, to whom the accused made an oral statement, was a "police officer" within the meaning of S. 26 of the Evidence Enactment, and since no caution had been administered to the accused before that statement was made that statement was also inadmissible under Regulation 33(1). Accused acquitted. **Tan Shu En v. Public Prosecutor** (1948) M.L.J. 196; and **Rasiah v. Public Prosecutor,** (1931—1932) F.M.S.L.R. 45 were referred to.

A. M. I. **Austin** (**Suffian** with him) for Public Prosecutor; K. C. **Chia** for the Accused.

* **Public Prosecutor v. Lee Weng (Raub Criminal Trial No. 3 of 1949).** Decided on March 10, 1949.

Emergency (Registration Areas) Regulations, 1948, Regulation 18(1)(a) — Charge of failing to register and obtain an identity card — Mentally deranged person.

In this case the appellant was convicted of the offence of failing to register and obtain an identity card under Regulation 18(1)(a) of the Emergency (Registration Areas) Regulations, 1948. He was said to have pleaded guilty and was fined. It appeared that the appellant was a mentally deranged person and that after his son had applied at the correct time for a registration card on behalf of his father, a registration officer went to the appellant's house to get the necessary particulars but was unable to do so owing to the appellant's condition.

Held, (Russell, J.), that in the circumstances, the conviction must be quashed.

Appellant in person; **M. Suffian** (D.P.P.) for the Respondent.

Chua Aik v. Public Prosecutor (K.L. Magistrate's Appeal No. 14 of 1949). Decided on April 8, 1949.

Penal Code S. 411 — Kedah Stolen Property Enactment S. 2(1) — Whether charge under S. 411 of the Penal Code can be joined with a charge under S. 2(1)† of the Stolen Property Enactment — Misjoinder of charges — Criminal Procedure Code S. 166.

In this case the Appellant was charged with fraudulent possession of a female buffalo, an offence under Section 2(1) of the Stolen Property Enactment, Kedah, and in the alterative with dishonestly retaining stolen property, to wit the female buffalo, an offence under S. 411 of the Penal Code. He was convicted on the second alternative charge.

Held, (Callow, J.), (1) that a charge under S. 411 of the Penal Code could not be tried as an alternative to a charge under S. 2(1) of the Stolen Property Enactment; (2) that because of the misjoinder of charges in this case the conviction must be set aside and a retrial ordered. **Banta Singh v. Public Prosecutor** (1941) M.L.J. 154; and **Public Prosecutor v. Surjan Singh** (1939) M.L.J. 109 were referred to; and **See Yew Poo v. Public Prosecutor** (1949) M.L.J. 64 was followed.

Lim Cheng Ean for the Appellant; **C. V. Boyle** for the Respondent.

Jusoh bin Saman v. Public Prosecutor (Kedah Criminal Appeal No. 16 of 1949). Decided on April 11, 1949.

Will — Presumption of due execution — Proof of forgery.

In this case the issue before the Court was as to the genuineness of the signature "Loh Ah Tong" on a Will, sought to be proved before the Court. The Will was attested by Mr. Osborne-Jones an Advocate and Solicitor of Singapore and his clerk, but in evidence it appeared that Mr. Osborne-Jones had no personal knowledge of the person who had made the signature on the Will. The clerk who had attested the signature had died. Mr. Y. H. Tsan gave evidence as an expert on Chinese characters and said that the signature on the will was a forgery.

Held, (Laville, J.), that the defendant had discharged the onus thrown on her and had proved that the propounded Will was a forgery.

In the goods of Mylne 9 C.W.N. 986 was referred to.

M. Ismail for the Plaintiff. **G. H. Toh** for the Defendant.

Estate of Loh Ah Tong; Loh Siew Lan (f) v. Tan Ah Eng (f) (J.B. Probate No. 9 of 1941). Decided on April 28, 1949.

SINGAPORE.

Companies — Private Companies — Winding Up.

In this case a number of shareholders, who held minority shares in a private company, presented a petition for winding-up on the ground that it was just and equitable that the Company should be wound up. It was alleged that the minority shareholders were being excluded from the management of the Company.

It was argued that the case came within the rule by which certain private companies were treated as partnerships for the purpose of winding up and winding up orders were made in circumstances in which dissolution would be ordered in the case of partnerships.

Held, (Murray-Aynsley, C.J.), that there was nothing to show that the majority had exceeded their legal rights in this case, and even if this was a case where the partnership rule applied, the circumstances did not justify a winding-up order.

Yenidge Tobacco Co. (1916) 2 Ch. 426 and **Davis v. Collett** (1935) 1 Ch. 693 were referred to.

R. H. Green for the Petitioners. **C. F. J. Ess** for the Respondents.

In the Matter of Kwong On Company Ltd. (Singapore Companies Winding-up No. 3 of 1948). Decided on March 22, 1949.

Constitutional Law — Sovereignty — Whether Court has jurisdiction over Sultan of Johore — Submission to jurisdiction — Proceedings in Japanese Court — Japanese Judgments and Civil Proceedings Ordinance 1946.

This was a Summons in Chambers in which it was sought to set aside an Originating Summons on the ground that the Court had no jurisdiction over His Highness Sir Ibrahim the Sultan of Johore who is a sovereign ruler. The Originating Summons was taken out by the Trustees of a Settlement made between His Highness the Sultan of Johore and Tungku Abubakar and prayed for an order that a Japanese decree made in Originating Summons No. 24 of 2605 (1945) in the Japanese Court of a Judge at Singapore be set aside.

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* The Case of **Poon Heong v. Public Prosecutor** (1949) M.L.J. 114 (C.A.) may be referred to. Ed. M.L.J.

† This Section is identical with S. 35(i) of the Minor Offences Enactment (Cap. 46). Ed. M.L.J.

Held, (Gordon-Smith, J.), (1) that in consequence of the Federation agreements dated the 21st of April 1948 and the Federation of Malaya Order in Council 1948, His Highness the Sultan of Johore regained his former status of a sovereign Ruler, subject to the Agreements and the Order in Council; (2) that he is therefore entitled to the immunities privileges and prerogatives usually accorded by the comity of nations to a sovereign Ruler and is not subject to the jurisdiction of the Court of the Colony unless he has submitted to such jurisdiction; (3) that His Highness the Sultan of Johore had in fact submitted to the jurisdiction of the Court in presenting the Originating Summons in 1945 and obtaining a decree thereon and as the present Originating Summons was a continuation of such earlier proceedings as authorised by the Japanese Judgments and Civil Proceedings Ordinance 1946, it can and should continue.

Mighell v. Sultan of Johore (1894) 1 Q.B. 149; **Stathum v. Stathum** 1912 P. 92; **Duff Development Co. Ltd. v. Kelantan Government** (1924) A.C. 797; **Pahang Consolidated Co. Ltd. v. State of Pahang** (1933) M.L.J. 247; **Foster v. Venture Globe Syndicate Ltd.** (1900) 1 Ch. 139; **Republic of Bolivia Exploration Syndicate** (1914) 1 Ch. 139; **Suarez v. Suarez** (1918) 1 Ch. 176; **The Jupiter** (1924) P. 236; **Luther v. Sagor** (1921) 1 K.B. 45; (1921) 3 K.B. 532; **Strousberg v. Republic of Costa Rica** 44 L.T. 199; **The Annette** (1919) Prob. 111; **Taylor v. Best** 139 E.R. 201; and **In re Gourju's Will Trusts** (1943) Ch. 24 were referred to.

John Laycock (D. Murphy with him) for the Applicants. **E. D. Shearn** (K. A. Seth with him) for the Respondent.

Tungku Abubakar & others v. His Highness the Sultan of Johore (Singapore Originating Summons No. 23 of 1947). Decided on April 7, 1949.

Criminal Procedure — Sentence — Whether sentences should be concurrent or consecutive.

In this case the learned District Judge convicted the appellant on two charges and sentenced him to six months r.i. on each charge. On the record the sentences were consecutive but in his grounds of judgment the learned District Judge stated that he ordered the two sentences to run concurrently.

Held, (Gordon-Smith, Ag. C.J.), that sentences should not be ordered to run consecutively unless there were some good grounds for so doing.

C. H. Koh for Appellant. **A. V. Winslow** (D.P.P.) for Respondent.

Hyder v. Rex (Singapore Magistrate's Appeal No. 202 of 1948). Decided on February 23, 1949.

Custodian of Property Proclamation — Custodian of Property (Vesting) Ordinance No. 3 of 1947 S. 3 — Action in rem against ship — Ownership of ship — Registration of ship.

This was an application by the Public Trustee to set aside a writ of Summons against the S.S. Gyoshin Maru on the ground that the vessel was vested in His Majesty. It appeared that the ship was captured by the Japanese in or about 1941 in Hongkong and when Malaya was re-occupied in 1945 the ship was being used here by the Japanese Military Authorities and was surrendered to the British Occupation Forces. It was taken into custody by the Ministry of Transport as agent for and on behalf of His Majesty and as agent for the Custodian of Property on behalf of His Majesty. Subsequently the Custodian chartered the ship to an individual who gave instructions to the Singapore Harbour Board to carry out the necessary repairs and works which were the subject matter of the claim. The vessel was registered at Singapore as being in the ownership of His Majesty represented by the Ministry of Transport in London.

Held, (Gordon-Smith, J.), (1) that on the evidence there was nothing to show who was the owner of the ship; (2) that under the Custodian of Property Proclamation, the Public Trustee had the custody of the vessel but there was no vesting in him of any property in the ship; (3) that no sure inference as to ownership could be drawn from the fact that the ship was registered as being in the ownership of His Majesty represented by the Ministry of Transport in London; (4) that therefore the motion must fail and the action should be allowed to proceed to judgment, such action being against the ship itself.

The Mogileff (1922) Pro. 122 was referred to.

W. G. Alcock (Public Trustee) for the Applicant. **L. A. J. Smith** for the Plaintiffs (Respondents).

Singapore Harbour Board v. Owners and other persons interested in the vessel "Gyoshin Maru" (Singapore Admiralty Suit No. 4 of 1948). Decided on March 28, 1949.

Merchant Shipping Ordinance S. 40 — Joint trial of more than three separate offences — Corroboration of accomplice evidence — Particulars of grounds of appeal — Criminal Procedure Code S. 302(v).

In this case the appellant appealed against his conviction on a charge under S. 40 of the Merchant Shipping Ordinance that he between 1940 — 1945 received a certain sum as remuneration in excess of the authorised fee. The memorandum of appeal set out five purported grounds viz: (1) insufficient evidence to convict, (2) insufficient corroboration, (3) wrong charge, (4) failure to follow the procedure laid down in the Criminal Procedure Code and (5) Section 40 of the Merchant Shipping Ordinance applies to Ghaut Serangs only. No particulars were given of the first four of these grounds.

Held, (Taylor, J.), (1) that particulars of the grounds of appeal should have been given in this case; (2) that in this case the appellant had in effect been tried at the same time for more than three separate offences which could not all have been tried at the same time if separately charged; (3) that the question of whether the witnesses were accomplices and if so, whether the corroboration was sufficient, had not been fully considered by the learned Magistrate in this case; (4) that in view of all the circumstances of the case there should be a retrial.

Ahmad Ibrahim for the appellant; **A. V. Winslow** (D.P.P.) for the Respondent.

Abdul Mutallib v. Rex (Singapore Marine Court Appeal Nos. 1 & 2 of 1948). Decided on April 4, 1949.

Minor Offences Ordinance, S. 34(1) — Fraudulent possession of property — Onus on accused person.

In this case the learned Magistrate convicted the appellant on a charge under Section 34(1) of the Minor Offences Ordinance and in his Grounds of Judgment said "the matter to be decided in this case is whether the explanation of the accused as to his possession of the bicycle was a reasonable and probable explanation and such that the Court was bound to accept his explanation".

Held, (Murray-Aynsley, C.J.), that this was considerably beyond what was required of an accused person under the Section and therefore the conviction cannot stand.

G. H. Poh for the Appellant; **A. V. Winslow** (D.P.P.) for the Respondent.

Yap Poh Heng v. Rex (Singapore Magistrate's Appeal No. 210 of 1948). Decided on March 8, 1949.